

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K-01-R-27**

ANTHONY CRANE RENTAL, L.P.

APPELLANT

V.

ORDER NO. K-19126

**COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET**

APPELLEES

This matter came on for hearing before the Kentucky Board of Tax Appeals Panel consisting of Chairman George Helton, Bill Rice and Elizabeth Weber, at the office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, on April 21, 2003. The Appellant appeared through its representative, Tom Liston. The Appellant was represented by counsel, the Hon. Erica Horne and Wendy Hensley of the law firm of Stites & Harbison. The following people testified for the parties: for the Appellant – Tom Liston; for the Appellees – Mark Bell, Jim Jordan and Mary Morris.

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

An audit by the Kentucky Transportation Cabinet (hereinafter the "Cabinet") was conducted on Anthony Crane Rental, L.P.'s Kentucky Highway Quarterly Tax Returns for the period of July 1, 1996 through December 31, 1999 (hereinafter the "Audit Period"). A timely filed letter of protest on the assessment for additional highway use taxes was received by the Cabinet on April 19, 2000. Pursuant to the protest filed by ACR, a Final Ruling was issued on September 25, 2001, upholding the Cabinet's audit in the amount of \$8,835.52 and reducing the

penalty applied to this amount to one (1%) percent. This decision was then appealed by ACR to the Kentucky Board of Tax Appeals pursuant to KRS 13B and 801 KAR 1:010.

FINDINGS OF FACT

1. The Appellant, Anthony Crane Rental, L.P. (hereinafter "ACR"), is a Delaware limited partnership with its principal place of business in Pittsburgh, Pennsylvania. ACR is in the business of renting construction machinery, including trucks, trailers, cranes hauled on trucks and self-propelled cranes. (Transcript of Evidence [hereinafter "T.E.], p. 37).
2. ACR has operators throughout the United States and in the Virgin Islands (T.E. p. 14).
3. During the Audit Period, ACR serviced its Kentucky customers from its Nitro, West Virginia location (T.E. p. 15). ACR could not produce any trip sheets or logs from this location for its vehicles traveling in Kentucky for the unreported quarters during the Audit Period (T.E. pp. 41-42).
4. ACR's fleet as of March 31, 2003, contained many trucks and cranes (T.E. p. 30).
5. There were four types of cranes in ACR's fleet. They are the Carry Deck, Rough Terrain Crane, Boom Truck and Hydraulic Truck Crane.
6. The Carry Decks and Rough Terrain Cranes do not travel on the highways, but are hauled on flat bed tractor-trailers owned by ACR (T.E. p. 45). If a Carry Deck or Rough Terrain Crane is being hauled on the back of a truck and that truck weighs over 59,999, it is taxable under the Kentucky weight-distance tax. Id.
7. A "Boom Truck" is a flat bed truck with a crane mounted near the cabin. Boom Trucks are always plated and can carry cargo like any other truck. See Deposition of Tom

Liston, page 35, made a part of the record at the Board of Tax Appeals Hearing on this matter (T.E. p. 37).

8. Boom Trucks are also always fitted with a license plate (T.E. p. 47).
9. Hydraulic Truck Cranes range in size from 40,000 to 130,000 and are sometimes plated. These cranes can be fitted with different jibs and boom extensions which are transported on the beds of the trucks for transport (T.E. p. 40).
10. ACR kept incomplete records and failed to produce any documentation to refute the Cabinet's audit (T.E. p. 74).
11. As a result, the Kentucky auditors issued a jeopardy assessment under KRS 138.680(2).
12. Each vehicle in ACR's fleet is assigned a USDOT or KYU number (T.E. p. 99). These numbers are identified when a vehicle crosses one of the weight scales in Kentucky. To calculate at the amount of tax owed, the auditor applied a 4.6 ratio arrived at by dividing the number of miles reported for the third quarter of 1996 (15,176 miles) by the estimated observation miles (3,294) (T.E. p. 99).
13. It is probable that many of the trips taken by ACR's vehicles in Kentucky that would have been taxable went undetected since the vehicles may not have passed over an observation point (T.E. p. 103).

CONCLUSIONS OF LAW

1. ACR is a "Motor Carrier" for the purposes of the definition set forth in KRS 138.660(3).
2. As a Motor Carrier, ACR is subject to the weight-distance tax under KRS 138.660 et seq.
3. ACR must pay the weight distance tax under KRS 138.660(3) on every "Motor Vehicle" as defined in KRS 138.665(4) as: "any vehicle, machine or mechanical contrivance

propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semi trailer attached to or having its front end supported by such motor vehicle."

4. If a Motor Vehicle is propelled by an engine and is licensed for operation in the state of its origin, it is subject to the weight-distance tax in Kentucky if it is over the threshold weight of 59,999 pounds.
5. ACR's Hydraulic Truck Cranes are Motor Vehicles under the definition set forth above and are thus subject to the Kentucky weight-distance tax if they are required to be plated in their states of origin.
6. It is the duty of a Motor Carrier to keep records such as manifests of lading, invoices and other papers pertaining to gasoline or special fuels consumption for a period of five (5) years pursuant to KRS 138.680. It was therefore the duty of ACR to produce those records to the Transportation Cabinet (T.E. p. 72).
7. The audit of the Cabinet is upheld for the reason that ACR failed to provide any records under KRS 138.680 to refute the calculations contained in said audit.

ORDER

After having considered the record from the hearing on April 21, 2003, and the Board of Tax Appeals being fully advised, **IT IS HEREBY ORDERED** that the Kentucky Transportation Cabinet Audit for the period of July 1, 1996, through December 31, 1999, is hereby affirmed in the amount of \$8,835.53, plus interest and penalties as set forth therein.

This is a final and appealable order which may be appealed to the Franklin Circuit Court or to the Circuit Court of the county in which the party aggrieved resides or conducts his place of business for filing a petition of appeal in the appropriate Circuit Court within thirty (30) days after this final order is mailed or delivered by personal service, pursuant to KRS 13B.140(1) and KRS 131.370(1). Copies of the petition of appeal shall include the names and addresses of all parties to the proceeding and the Kentucky Board of Tax Appeals and a statement of the grounds on which the review is requested. The petition of appeal shall be accompanied by a copy of this final order. Within twenty (20) days after the service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the original record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER AND MAILING: February 24, 2004

FULL BOARD CONCURRING

GEORGE H. HELTON
Chairman